

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONFRANKIE SUNDANCE LEWIS
a/k/a FRANK SARGENT,

Plaintiffs,

v.

EASTERN STATE HOSPITAL
DOCTORS, MRS.
MARCINKOWSKI, MRS.
BORROMEO,

Defendants.

NO. CV-08-110-RHW

**ORDER DISMISSING
AMENDED COMPLAINT**

Before the Court is Plaintiff's letter dated August 17, 2008, which the Court construes as his Amended Complaint. (Ct. Rec. 12.) Plaintiff filed a letter, dated May 23, 2008, construed as a motion to direct service (Ct. Rec. 9), which was denied on August 7, 2008, with leave to amend (Ct. Rec. 11). Plaintiff filed a long and detailed document, construed as a complaint, on March 31, 2008. (Ct. Rec. 1). The Court directed him to file an application to proceed *in forma pauperis* on April 10, 2008 (Ct. Rec. 3). In that Order, the Court also directed Mr. Lewis to submit a complaint in the proper form. Mr. Lewis submitted a second complaint on April 29, 2008, which consists of a single cover sheet listing Defendants' names and alleging "malpractice," but which does not contain any other information (Ct. Rec. 8).

Pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii), the Court must review a complaint filed *in forma pauperis* for legal sufficiency. If the complaint is "frivolous, malicious, fails to state a claim on which relief may be granted, or seeks

1 monetary relief against a defendant who is immune from such relief” then the
2 district court is required to dismiss the claim. *Lopez v. Smith*, 203 F.3d 1122,
3 1126-27 n.7 (9th Cir. 2000).

4 A complaint, or portion thereof, will be dismissed for failure to state a claim
5 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to]
6 raise a right to relief above the speculative level, on the assumption that all the
7 allegations in the complaint are true.” *See Bell Atlantic, Corp. v. Twombly*, 127
8 S.Ct. 1555, 1565 (2007) (citations omitted). In other words, failure to present
9 enough facts to state a claim to relief that is plausible on the face of the complaint
10 will subject that complaint to dismissal. *Id.* at 1574. The Court must construe the
11 pleading in the light most favorable to Plaintiff, and resolve all doubts in Plaintiff’s
12 favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). On the basis of these
13 standards, Plaintiff’s present allegations fail to state a claim upon which relief can
14 be granted and/or are frivolous.

15 Plaintiff’s original complaint alleged Defendants caused him to endure “17
16 months of mental anguish” due to their treatment and evaluation of him in relation
17 to a State court criminal case in 2003, which was eventually dismissed in 2004.
18 Plaintiff’s first complaint and amended complaint fall short of the legal
19 requirements. Plaintiff has (1) failed to specifically identify which federal
20 statutory or constitutional rights were allegedly violated, and (2) failed to make any
21 allegations showing how the individually named Defendants caused or personally
22 participated in depriving him of his federal or constitutional rights. Moreover,
23 Federal Rule of Civil Procedure 8(a) requires a complaint to contain a short and
24 plain statement of the grounds on which the Court’s jurisdiction depends, a short
25 and plain statement of the claim showing the pleader is entitled to relief, and a
26 demand for judgment for the relief the pleader seeks. Rule 8(e)(1) requires
27 averment of a pleading be simple, concise, and direct. Plaintiff’s first complaint
28 does not meet this requirement, nor does his most recent, amended complaint.

1 Furthermore, the Court gave Plaintiff an opportunity to amend his complaint
2 to comply with the Federal Rules of Civil Procedure and with federal law by
3 specifically alleging the following:

- 4 (1) The names of the persons who caused or personally participated in
5 causing the alleged deprivation of his federal or constitutional rights;
6 (2) The dates on which the conduct of each Defendant allegedly took
7 place; and
8 (3) The specific conduct or action Plaintiff alleges is unconstitutional.

9 Plaintiff failed to set forth these factual allegations in his amended
10 complaint. As in the original complaint, Plaintiff only generally alleged that
11 certain doctors committed “malpractice” when they found him incompetent to
12 stand trial for burglary charges, and that the doctors owe him damages in excess of
13 \$2.5 million. (Ct. Recs. 1 & 12). Plaintiff has had an opportunity to amend, and
14 this pleading cannot be cured by allegations of other facts. Therefore, this case is
15 not legally sufficient to proceed *in forma pauperis* and Plaintiff’s letter, dated
16 August 17, 2008, construed as an amended complaint (Ct. Rec. 12), is

17 **DISMISSED for failure to state a claim under 28 U.S.C. § 1915(e)(2).**

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter the
19 Order, forward a copy to Plaintiff, and **close the file.**

20 **DATED** this 11th day of September, 2008.

21 *s/ Robert H. Whaley*

22 ROBERT H. WHALEY
23 Chief United States District Judge
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